

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 23-12825 (MBK)  
  
LTL MANAGEMENT LLC, .  
Debtor. . U.S. Courthouse  
402 East State Street  
Trenton, NJ 08608  
• • • • .  
  
LTL MANAGEMENT LLC, . Adv. No. 23-01092 (MBK)  
Plaintiff, .  
v. .  
THOSE PARTIES LISTED ON .  
APPENDIX A TO COMPLAINT AND .  
JOHN AND JANE DOES 1-1000, .  
Defendants. . Thursday, April 20, 2023  
• • • • . 12:02 p.m.

TRANSCRIPT OF RULING ON  
MEMORANDUM OF LAW IN SUPPORT OF MOTION BY MOVANT ANTHONY  
HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE  
AUTOMATIC STAY, SECOND AMENDED EX PARTY TEMPORARY RESTRAINING  
ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAIVING  
THE FOURTEEN-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 4001(a)(3) [DOCKET 71]; AND DEBTOR'S MOTION FOR AN  
ORDER (I) DECLARING THAT THE AUTOMATIC STAY APPLIES OR EXTENDS  
TO CERTAIN ACTIONS AGAINST NON DEBTORS OR (II) PRELIMINARILY  
ENJOINING SUCH ACTIONS AND (III) GRANTING A TEMPORARY  
RESTRAINING ORDER EX PARTE PENDING A HEARING ON A PRELIMINARY  
INJUNCTION [ADVERSARY DOCKET 2]; AND MOTION TO SEAL; AND  
SERVICE PROCEDURES MOTION  
**BEFORE THE HONORABLE MICHAEL B. KAPLAN**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

---

J&J COURT TRANSCRIBERS, INC.  
268 Evergreen Avenue  
Hamilton, New Jersey 08619  
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES:

For the Debtor:

Jones Day  
By: GREGORY M. GORDON, ESQ.  
DAN B. PRIETO, ESQ.  
AMANDA S. RUSH, ESQ.  
2727 North Harwood Street, Suite 500  
Dallas, TX 75201

Skadden Arps Slate Meagher &  
Flom, LLP  
By: ALLISON M. BROWN, ESQ.  
One Manhattan West  
New York, NY 10001

Various Talc Personal  
Injury Claimants:

Watts Guerra LLP  
By: MIKAL C. WATTS, ESQ.  
5726 W. Hausman Road, Suite 119  
San Antonio, TX 78249

For Ad Hoc Committee  
of Certain Talc  
Claimants and Ad Hoc  
Committee of Creditors:

Genova Burns LLC  
By: DANIEL M. STOLZ, ESQ.  
494 Broad Street  
Newark, NJ 07102

Brown Rudnick  
By: JEFFREY L. JONAS, ESQ.  
DAVID J. MOLTON, ESQ.  
MICHAEL WINOGRAD, ESQ.  
7 Times Square  
New York, NY 10036

Otterbourg PC  
By: MELANIE CYGANOWSKI, ESQ.  
230 Park Avenue  
New York, NY 10169-0075

For Anthony Hernandez  
Valadez:

Kazan McClain Satterley & Greenwood  
By: JOSEPH SATTERLEY, ESQ.  
55 Harrison St. Suite 400  
Oakland, CA 94607

For the Office of the  
United States Trustee:

Office of the United States Trustee  
By: LINDA RICHENDERFER, ESQ.  
JEFF SPONDER, ESQ.  
J. Caleb Boggs Federal Building  
844 King Street, Suite 2207  
Lockbox 35  
Wilmington, DE 19801

APPEARANCES CONT'D:

For Various Talc  
Claimants:

Maune Raichle Hartley Frency &  
Mudd, LLC  
By: CLAYTON L. THOMPSON, ESQ.  
150 West 30th Street, Suite 201  
New York, NY 10001

Levy Konigsberg, LLP  
By: JEROME H. BLOCK, ESQ.  
MOSHE MAIMON, ESQ.  
101 Grovers Mill Road, Suite 105  
Lawrence Township, NJ 08648

Simon Greenstone Panatier, PC  
By: LEAH CYLIA KAGAN, ESQ.  
1201 Elm Street, Suite 3400  
Dallas, TX 75720

For Claimant Alishia  
Landrum:

Beasley Allen  
By: ANDY BIRCHFIELD, ESQ.  
218 Commerce Street  
Montgomery, AL 36104

For Arnold & Itkin:

Pachulski Stang Ziehl & Jones LLP  
By: LAURA DAVIS JONES, ESQ.  
919 North Market Street  
17th Floor  
Wilmington, DE 19801

For Paul Crouch,  
individually and on  
behalf of Estate of  
Cynthia Lorraine Crouch: Ellicott City, MD 21043

Ruckdeschel Law Firm, LLC  
By: JONATHAN RUCKDESCHEL, ESQ.  
8357 Main Street  
Ellicott City, MD 21043

For the Ad Hoc Committee  
of Attorney Generals:

Womble Bond Dickinson  
By: ERICKA JOHNSON, ESQ.  
1313 North Market Street  
Suite 1200  
Wilmington, DE, US 19801

- - - - -

1                   THE COURT: Okay. Good afternoon, everyone.

2                   This is Judge Kaplan. Getting a little feedback.

3                   UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

4                   THE COURT: Good afternoon.

5                   I hope everybody's doing well. Bear with me as I go  
6 through the usual mechanics of getting us up from an IT  
7 perspective.

8                   All right. Thank you. This afternoon I intend to  
9 address the pending motions with respect to the preliminary  
10 injunction based on the debtor's verified complaint, as well as  
11 the pending relief from automatic stay filed by Mr. Satterley  
12 on behalf of Emory Valadez.

13                  First, some preliminary matters, if I may. The Court  
14 is in receipt of submitted evidence and deposition designations  
15 proffered, by both the debtor and the committee, TCC. The  
16 Court is also in receipt of the objection filed by the TCC to  
17 certain designations of testimony with respect to Mr. Haas,  
18 Mr. Murdica, and Mr. Birchfield.

19                  At this point in time, the Court is accepting into  
20 evidence all of the evidence and designations submitted by both  
21 the debtor and the Committee. The Court is overruling the  
22 objections raised by the Committee with respect to those  
23 identified depositions and testimony. But the Court is going  
24 to note that the Court in reaching its ruling this afternoon  
25 has accorded zero weight to the depositions and the evidence

1 reflected in the testimony.

2                   The Court is also in receipt of supplemental  
3 submissions from you all. Thank you. We have the debtor's  
4 supplemental submission dated April 19th. We have the  
5 Committee's objection to it. We have supplemental submissions  
6 on behalf of the Bergeron's, on behalf of Maune Raichle's  
7 clients, Katherine Tolleson, on behalf of Paul Crouch. We have  
8 also, the Court is in receipt of an initial statement on behalf  
9 of an ad hoc committee supporting talc claimants.

10                  Oh, let me go back. With respect to the evidence, I  
11 have also received the U.S. Trustee's objection with respect to  
12 the use of confidentiality designations. And the Court agrees  
13 that the evidence has been accepted for purposes of the PI  
14 motion only and not for any other purpose in this case. I  
15 think that covers all these supplemental submissions. And the  
16 Court has had the opportunity to review these this morning.

17                  I'm prepared to read my ruling into the record. I  
18 hope you all will bear with me in the time it takes.

19                  I sat through yours.

20                  All right. One of the advantages of conducting the  
21 hearing in a hybrid fashion, both live and remote this past  
22 Tuesday, was that my wife could log in and see that I was  
23 actually working and in Court for over nine hours. And when I  
24 got home, she asked me why I didn't cut off the arguments and  
25 the endless PowerPoint presentations sooner. I told her that I

1 was looking for answers, that it was repeated often that the  
2 world is watching and I wanted every opportunity to understand  
3 the facts and get answers to my concerns. I believe that the  
4 Court and the world is entitled to such answers.

5 Well, frankly, after Tuesday, I have more questions  
6 than answers. The fundamental question addressed by the  
7 parties is whether the debtor has a realistic possibility of  
8 success. It is the linchpin of the four-prong injunction test  
9 employed universally. In Chapter 11, the inquiry is more  
10 focused on whether the debtor has a reasonable possibility of  
11 reorganizing, which needless to say, at a minimum, requires  
12 that the debtor survive any motions to dismiss for cause,  
13 including lack of good faith.

14 Our Third Circuit now has made clear that it views  
15 the gateway to good faith being a determination that a debtor  
16 is in financial distress. Mr. Maimon, among others, argued  
17 that this determination should be straightforward. Did  
18 anything occur in the two hours and 11 minutes between filings  
19 and after the Third Circuit's ruling, which changed the  
20 debtor's financial situation and created distress.

21 I'm not sure that this is the correct question.  
22 Rather, I think it must be whether anything changed in the  
23 debtor's financial picture. Since October of '21, the date of  
24 the first filing and the period fixed for purposes of the five-  
25 day trial undertaken in February of 2022, and April 4, 2023,

1 the date of the second filing.

2           Well, certain things have changed. Claims against  
3 the debtor have soared from approximately 41,000 to in all  
4 likelihood well over a 100,000. Are these new claims  
5 supportable? Tuesday provided more speculation than answers.  
6 Does the increased volume of claims add to or create financial  
7 distress for this debtor? Maybe. Maybe not.

8           Since the first filing, the acknowledged floor for  
9 the debtor's talc liability has increased from 2 billion to 8.9  
10 billion with questions remaining as to whether this sum would  
11 cover the billions claim due for third-party providers, state  
12 regulators, Canadian class claimants, indemnified parties, and  
13 others.

14           Does this increase floor of debt add to or create  
15 financial distress for this debtor? Again, maybe. Maybe not.  
16 Since the first filing, the debtor's funding resources have  
17 been reduced from 61 billion to possibly 30 billion plus. The  
18 reduction certainly appears manufactured by the debtor, HoldCo,  
19 and J&J in response to the Third Circuit's ruling. Does this  
20 reduction in funding add to or create financial distress for  
21 this debtor? Maybe. Maybe not.

22           Does the manner in which the transactions were  
23 undertaken give rise to an independent bases for finding bad  
24 faith? Possibly. Do the transactions give rise to fraudulent  
25 transfer liability for the benefit of the debtor's creditors?

1 Well, constructive fraud generally, under the Bankruptcy Code  
2 and state law, requires a determination of insolvency. Can the  
3 Court conclude after Tuesday's hearings that the debtor's  
4 liabilities exceed its assets? I don't think so since the  
5 extent of the liabilities has not been anywhere close to being  
6 fixed.

7                 The Third Circuit specifically cautioned and  
8 admonished against casual calculations and back of the envelope  
9 forecasts. Given the limited record here, this Court cannot  
10 make an informed determination or comparison of the assets and  
11 liabilities of this debtor in this bankruptcy, which according  
12 to the Third Circuit, is where the inquiry should be focused.

13                 As to actual fraud, can the Court conclude that  
14 there's been an actual intent to hinder, delay, and defraud  
15 creditors? Maybe. But proof of subjective intent may be  
16 difficult to determine without knowing the extent of the  
17 liabilities and whether it's reasonable for the debtor to  
18 believe that its remaining assets are sufficient to cover such  
19 liabilities.

20                 And for the Court, there was a very concerning  
21 question regarding this loss of value in the funding agreements  
22 and its potential impact on the interest of present and future  
23 creditors. What happens if this case is dismissed? I know the  
24 lawyers that represent these claimants will fight zealously and  
25 tirelessly for their individual clients, as they should. But

1 who pursues the claims for the possible loss in funding value?  
2 Who will fight for the other a 100,000 or so creditors or  
3 claimants to pursue recovery that may be available because of  
4 these transactions? Outside of bankruptcy, who will fight to  
5 protect the interest of future claimants?

6 Now, it may be that this Court determines that the  
7 last series of questions, or in fact any of the other  
8 questions, are not relevant. Once the Court hears from the  
9 movants with regard to the anticipated motion to dismiss,  
10 undoubtedly the debtor has an uphill battle. There are  
11 unresolved issues such as the voidability of the 2021 funding  
12 agreement, the potentially largest fraudulent transfer  
13 undertaken in history, as the phrase has been proffered; the  
14 need to acquire 75 percent approval for the plan. But at this  
15 point, with so many unanswered questions, the Court cannot  
16 reach a determination that there is no possibility of a  
17 successful reorganization premised upon the objections of  
18 certain claimants, vehement as they may be.

19 The Court cannot at this juncture *sua sponte* dismiss  
20 this case or rely on bad faith as a basis to deny the  
21 preliminary injunction. That being said, the Court is  
22 skeptical and will require a well-supported and timely showing  
23 by the debtor that this reorganization has a meaningful chance.

24 For purposes of today, the Court refers and  
25 incorporates into this ruling its analyses and discussions

10

1 found in its prior published opinions at 638 B.R. 291, 640 B.R.  
2 at 322, and 645 B.R. 59. Specifically, these prior opinions  
3 explicate the Court's authority to hear, decide, and enter a  
4 final order and judgment in the adversary proceeding, which  
5 would have the effect of extending the automatic stay and  
6 enjoining litigation against non-debtor third parties relative  
7 to the debtor talc claims as defined in the verified complaint.

8 In sum, the Court concludes that Section 362(a) and  
9 Section 105(a), and/or the Court's inherent powers can each  
10 serve as an independent basis to extend the stay to non-debtor  
11 third parties. In so concluding, the Court continues to follow  
12 the Philadelphia newspapers approach set forth at 423 B.R. 102,  
13 which considers whether there is jurisdiction to enter the  
14 injunction, whether the extension of the automatic stay to non-  
15 debtors is appropriate, and whether the Court should in its  
16 discretion, issue the injunction.

17 As in the last case, the debtor has asked for a  
18 preliminary injunction and/or an extension of the stay to  
19 certain non-debtor parties. The UST, the TCC, and  
20 representatives of certain claimants, among others, oppose this  
21 request. At the core of all these objections is the argument  
22 that the debtor cannot confirm a plan, that there is no  
23 likelihood of success because the objecting claimants will not  
24 agree to a plan proposed by the debtor. Yet the debtor comes  
25 before this Court with an alleged 55,000 or more claimants in

1 support of a proposed settlement.

2           This Court cannot discount those claimant's rights  
3 and preferences in favor of others. Notwithstanding, claimants  
4 who have had over the past 18 months their claims and  
5 litigation stalled during the pendency of the prior bankruptcy,  
6 should not lose more valuable time. Therefore, I have  
7 determined that the TRO currently in place should be dissolved  
8 and replaced with a far more limited preliminary injunction.

9           Needless to say, the automatic stay remains in effect  
10 as to the debtor. The more limited preliminary injunction to  
11 be entered will prohibit the commencement or continuation of  
12 any trial against any of the protected parties identified in  
13 Appendix B to the verified complaint, as amended, through and  
14 including June 15, 2023, a period of approximately 60 days.  
15 This is aimed at preventing the liquidation of claims for which  
16 this debtor may have liability with the liquidation occurring  
17 outside of this bankruptcy.

18           But to be clear, I am neither enjoining nor  
19 restraining the filing of new complaints against the protected  
20 parties, nor am I enjoining or restraining any ongoing  
21 discovery or other pretrial matters. Given the very limited  
22 scope of these restraints, the Court did not, and frankly could  
23 not, on the factual record examine the basis of relief for each  
24 of the specific protected parties.

25           The restraints included in the current amended TRO

1 will remain in effect as to the MDL that's currently pending  
2 before Judge Michael Shipp. I have spoken with Judge Shipp and  
3 we both agree that the continuing restraints as to the MDL  
4 should and will be revisited along with the continuing  
5 appropriateness of the preliminary injunction itself at the  
6 Court's omnibus hearing scheduled for May 22, 2023.

7 With respect to Section 108(c) tolling provisions  
8 relative to the statute of limitations for unfiled claims, the  
9 Court's preliminary injunction order will include language that  
10 the automatic stay under Section 362(a) remains in effect for  
11 unfiled claims unless the claimant, through counsel, notifies  
12 the debtor in writing of his, her, or their interests and  
13 intent to proceed with the filing of a complaint.

14 The purpose of this language is to ensure that such  
15 claimants who wish to defer filing a complaint and paying the  
16 necessary filing fees while the bankruptcy case unfolds are not  
17 placed in the position of having to file and incur that  
18 expense. The Court welcomes any and all suggestions as to  
19 workable language that addresses this issue.

20 Finally, the Court recognizes the debtor's concern  
21 that a full throttled resumption of litigation may place  
22 immediate burdens on staff and potential witnesses, such as a  
23 proffered 30(b) (6) witness and sees no reason why transcripts  
24 of such initial depositions can't be provided in lieu of  
25 multiple repeat and duplicative depositions across the country.

13

1 If a problem arises in this regard, the Court will address this  
2 and any specific problems at a future date.

3           In reaching today's ruling, that Court employs its  
4 discretion and judgment to balance the interest of the tens of  
5 thousands of claimants who wish to go forward outside of  
6 bankruptcy, the interest of the tens of thousands of claimants  
7 who wish to pursue settlement within this case, and the  
8 interest of the debtor in pursuing a fair and equitable  
9 resolution of these claims through a bankruptcy reorganization.

10           I wish to make one thing clear. Contrary to some  
11 suggestions, the Court is not endeavoring to make policy. That  
12 has never been the Court's aim. Rather, the Court is engaged  
13 in trying to do its best to advance the interest of creditors  
14 as a whole, a task I and my bankruptcy judge colleagues  
15 undertake daily.

16           With respect to the Valadez matter, I am troubled  
17 with the same issue I've had to tackle in the prior case,  
18 whether it is ever appropriate to start picking and choosing  
19 which claimant among thousands should be permitted to go  
20 forward and liquidate claims while others abide by the process.  
21 From everything I have heard and read there remains  
22 considerable tasks, including expert discovery and motion  
23 practice, which must be completed before the matter is ready  
24 for trial.

25           Mr. Satterley, I see you're on. There are no present

1 restraints preventing you from moving forward in this regard  
2 apart from proceeding to trial. I will provide your client the  
3 opportunity to quickly revisit this issue by carrying your  
4 motion to May 3rd, and if appropriate, that's the next  
5 scheduled omnibus hearing, and if appropriate to the May 22nd  
6 hearing, to hear where you stand with respect to pretrial  
7 matters.

8 Alternatively, you may submit a form of order  
9 granting in part and denying in part your requested relief so  
10 that you may pursue an immediate appeal. You can advise  
11 chambers after this hearing as to your preference.

12 Finally, as noted, on Tuesday as part of the text  
13 order in the first case, which terminated mediation due to the  
14 anticipated dismissal of the case, I urge the parties to  
15 continue settlement discussions. I have not altered my view  
16 that mediation is important. Indeed, considering the debtors'  
17 intent to file a plan in short order I believe mediation is  
18 critical and should begin as soon as possible.

19 The parties must have confidence in the mediator, and  
20 the mediator must have plenary authority to conduct any  
21 mediation as he, she, or they deem appropriate. I know the  
22 debtor has filed a motion to reappoint Mr. Russo and Judge  
23 Schneider. Notwithstanding, I am directing the Committee and  
24 the debtor to provide me in confidence with three names of  
25 proposed mediators by the close of business this coming

15

1 Wednesday. I am away out of state until then. My inclination  
2 is to appoint a single mediator to start who will be subject to  
3 the same mediation protocol employed in the prior case. Thank  
4 you.

5 I will ask the debtor to settle a form of order with  
6 the Committee and others, reflecting my ruling today, of course  
7 by reference. And fearfully I will ask are there any  
8 questions?

9 MR. SATTERLEY: Yes, Your Honor.

10 THE COURT: Well --

11 MR. SATTERLEY: I'm sorry.

12 THE COURT: We'll start -- Mr. Satterley?

13 MR. SATTERLEY: Yes. So, obviously I got -- I'm  
14 going to read Your Honor's -- the transcript whenever we get it  
15 today, and I need to consult with appellate counsel, but I just  
16 got a little confused as you read along.

17 With regards to the granting of the -- or the  
18 decision to appeal, will Your Honor allow me and certify the  
19 issue to the Third Circuit? I need to know that so I can talk  
20 to appellate counsel also as I advised Your Honor on the 11th.  
21 I advised Your Honor that it was my intention to take a writ --  
22 emergency writ because of the pending death of my client, so I  
23 just wanted to find out from Your Honor will you give me  
24 permission, if my appellate counsel tells me it's appropriate,  
25 to go to the Third Circuit directly?

1           THE COURT: The best I can do is give you the  
2 authorization to make the request to me formally. I have to --

3           MR. SATTERLEY: Yes, Your Honor.

4           THE COURT: -- allow other parties to weigh in on it.

5           MR. JONAS: Your Honor, may we have the same  
6 response? Because we would intend to do so, as well.

7           THE COURT: The same response would be appropriate.

8           MR. JONAS: Thank you, Your Honor.

9           MS. BROWN: Your Honor, this is Allie Brown. Could I  
10 ask, I understand the Court's ruling. Given the significance  
11 of the discovery that will no doubt be coming our way very  
12 soon, could we ask that the order not go into effect until  
13 Monday at nine a.m. so that we can alert counsel throughout the  
14 country who handle these matters on a local basis and have no  
15 visibility into what's been going on here, so they are prepared  
16 to deal with letters to the Court, and calls to the Court in  
17 the individual cases they are monitoring? I fear if we don't  
18 do that it could be somewhat chaotic, as discovery requests  
19 start immediately.

20           THE COURT: Well, as a practical --

21           MR. SATTERLEY: May I respond to that, Your Honor?

22           THE COURT: Let me -- I'll let you respond. Let me  
23 -- as a practical matter I don't have an order. I asked the  
24 parties to settle an order. And I leave on Saturday morning,  
25 and I'll be out of the state. So --

1 MS. BROWN: Understood.

2 THE COURT: I don't know how to respond to you.

3 Certainly --

4 MS. BROWN: I think I understand, Your Honor. So, it  
5 will be dependent on us proposing something to the Court --

6 THE COURT: Right.

7 MS. BROWN: -- and there is at least a few days time  
8 on that so we can get the logistics in order.

9 THE COURT: Right. With Mr. Satterley --

10 MS. BROWN: Understood.

11 THE COURT: Yes. Thank you.

12 MR. SATTERLEY: So, this -- counsel has been aware of  
13 Your Honor's tentative since last Thursday, and Your Honor, you  
14 know, while it's more formalistic and you put it all in more  
15 detail, they have been aware, and just as Your Honor directed  
16 me to do, I went to Judge Seabolt and asked him to do exactly  
17 what Your Honor said, move the hearing until today. And  
18 counsel for J&J and all the retailers were present, and they  
19 said I correctly stated what Your Honor said. There is  
20 absolutely no reason to further delay, because trial courts,  
21 state courts have a docket also, and they need to manage their  
22 docket.

23 So I would request, Your Honor, to allow us to advise  
24 the state courts, advise the trial judges the procedure.  
25 Obviously various state laws control with regards to how much

1 time they have to respond to discovery. No state that I'm  
2 aware of requires the debtor -- I mean, the non-debtor, the  
3 non-debtor to respond immediately to discovery. Usually it's  
4 20 days, or 30 days, or 45 days.

5 So even if we were to tender discovery today, it's  
6 not going to be tomorrow that they're going to respond to it.  
7 So I object to Mrs. Brown's request to once again further delay  
8 the resumption of our client's rights to go -- and because, for  
9 example, Your Honor, one of the cases I filed an objection to  
10 was Mr. Eagles (phonetic). His trial, Mr. Eagles' trial was  
11 already set for April the 2nd. Because of the TRO we moved it  
12 to May the 1st. And now I was going to tell Judge Seabolt to  
13 move it to June the 15th. And what Ms. Brown is in essence  
14 asking for is in Mr. Eagles' case, who is dying of  
15 mesothelioma, that we would not be able to start preparing that  
16 case further for trial. So I would object to Mrs. Brown's  
17 request, and allow us to begin the preparation so that these  
18 individuals are not further harmed.

19 THE COURT: I think I can --

20 MS. BROWN: Your Honor --

21 THE COURT: Well, Ms. Brown, I think I can address  
22 this -- and I see other hands raised. I do not have an  
23 objection -- I know you all will secure a copy of this  
24 transcript quickly. I have no objection to you providing it to  
25 non-bankruptcy courts with the note that a formal order has not

1 been entered. It will speak for itself.

2 MS. BROWN: And, Your Honor, until the formal order  
3 is entered we will have at least a few days to organize the  
4 local counsel and be prepared to respond?

5 THE COURT: I can't see any court acting to prejudice  
6 those interests in the days it will take. Work hard, get me an  
7 order. I will enter it even if I am not in the state. But --

8 MS. BROWN: Understood, Your Honor.

9 THE COURT: All right. Mr. Placitella?

10 MR. PLACITELLA: Good morning, Your Honor. Thank you  
11 very much. In your decision you referenced Appendix B to the  
12 Notice of Filing. There was an amended Appendix B that listed  
13 Janssen and Kenvue that we received with no notice and no  
14 evidence offered during the hearing, and I want to understand  
15 the scope of your decision if it includes Janssen and Kenvue  
16 for which no evidence was submitted during the hearing, and for  
17 which Mr. Kim said he had no knowledge whatsoever.

18 THE COURT: Well, I anticipated your question, and  
19 candidly, I can't see how your clients would be prejudiced with  
20 no trial to occur. That's the only limitation until June in a  
21 case that where issue hasn't even been joined yet. So, but if  
22 you want to explain --

23 MR. PLACITELLA: But the issue, Your Honor --

24 THE COURT: If you want to address it --

25 MR. PLACITELLA: Respectfully, Your Honor, yes,

1 because the issue is whether the standard has been met for a  
2 temporary restraining order. And with no evidence, and in  
3 fact, they submitted a brief to you saying whatever happened  
4 after Holdco is irrelevant, with no evidence, even with Your  
5 Honor's best intent there is no basis even for a short  
6 restraint to stop the case against Kenvue or Janssen. The  
7 operation of -- I'm assuming what's going to happen is they are  
8 going to file a motion to dismiss, and the trial court will  
9 make a determination.

10           But, you know, having them give notice, you know,  
11 after five a day before the hearing, put on no evidence and say  
12 oh, well, protect them too when Mr. Kim doesn't even know why  
13 it was included, respectfully, I don't think it should be  
14 included.

15           THE COURT: All right. Fair enough. At this  
16 juncture I am going to excise out those two defendants from the  
17 Exhibit A. I will preserve the debtor's rights to come back  
18 before me to include them at a later date if it becomes  
19 relevant.

20           MR. PLACITELLA: Thank you, Your Honor.

21           THE COURT: Thank you.

22           MR. JONAS: Your Honor?

23           THE COURT: Yes?

24           MR. JONAS: Your Honor, it's Jeff Jonas from Brown,  
25 Rudnick, and with me is Melanie Cyganowski from Otterbourg on

21

1 behalf of the Committee, TCC. Your Honor, I would ask that you  
2 sua sponte grant the Committee derivative standing to  
3 investigate and bring state court causes of action and claims.  
4 I think -- I hope, Your Honor, that our hearing, trial earlier  
5 this week, if nothing else, demonstrated, and I think you have  
6 sufficient evidence as to the futility of expecting this debtor  
7 to investigate, never mind bring, those claims and causes of  
8 action. So we would ask you to do that now, Your Honor.

9 THE COURT: All right. Does the debtor wish to be  
10 heard? Mr. Gordon?

11 MR. GORDON: Greg Gordon, Your Honor, Jones Day, on  
12 behalf of the debtor. I don't think it's appropriate to make  
13 that request orally for a sua sponte ruling. There are  
14 standards that have to be met, including advising the Court and  
15 the parties what claims we're talking about, and there's got to  
16 be a showing that they are colorable claims. And so from our  
17 perspective we think, as you handled the other matter, a motion  
18 should be filed and we should be given the right to respond to  
19 it.

20 THE COURT: All right. I knew there would be a  
21 danger in conducting this not in a webinar format where counsel  
22 had the ability to ask questions. I'm not prepared or inclined  
23 to grant sua sponte relief at this -- or any further relief  
24 today. The purpose for today's hearing was to try to read a  
25 ruling and direct the parties to come to a form of order.

1                   MR. GORDON: And, Your Honor, I wanted to spend one  
2 minute on Mr. Placitella, if I could. I obviously heard Your  
3 Honor's ruling. I just wanted to indicate that he did say in  
4 court, as I recall, that the basis for the claims is successor  
5 in interest, which would be property of the estate, and  
6 therefore those claims would be barred by the automatic stay.  
7 But we heard Your Honor. We'll handle that appropriately.  
8 We'll file a motion as necessary to get the relief that we  
9 think would confirm that those claims are barred by the  
10 automatic stay.

11                  THE COURT: In fairness to Mr. Placitella, I was  
12 moving everybody along quickly --

13                  MR. GORDON: Understood.

14                  THE COURT: -- on Tuesday, and we didn't vet these  
15 arguments.

16                  MR. GORDON: Sure.

17                  THE COURT: And given the stage where it's at there's  
18 ample time to address it further.

19                  MR. GORDON: Understood, Your Honor.

20                  THE COURT: Ms. Cyganowski, I can't tell, is there  
21 still a hand up?

22                  MS. CYGANOWSKI: Yes, there is, Your Honor. Melanie  
23 Cyganowski for the Committee. I'm not asking for the relief  
24 today, but just to advise the Court that we will be opposing  
25 the debtor's request for expedited relief with respect to the

1 hearing on the disclosure and plan.

2 THE COURT: The Court has received the debtor's  
3 motion on shortened time, but I believe the Court did receive  
4 something from your firm, or one of the firms representing the  
5 TCC in opposition. In all candor, it sits on the corner of my  
6 desk, and I have not looked at it, nor will I through today and  
7 probably through tomorrow. So if other firms want to weigh in,  
8 one side or the other, they may do so.

9 MS. CYGANOWSKI: Thank you.

10 MR. SATTERLEY: Your Honor, I have one last question.  
11 Can we -- I know Your Honor said you were going to be away. Is  
12 it -- can we have a deadline for the order? The only thing I'm  
13 afraid of, we can obviously meet and confer today. Can we  
14 submit by tomorrow competing orders to the extent we can't  
15 agree on the exact language? Because I have -- not necessarily  
16 with this debtor, but I have had situations where defendants in  
17 litigation don't agree, and it just protracts the submission of  
18 the order of the Court. So I was going to suggest is it  
19 possible we'll meet and confer this afternoon. If we can't  
20 agree to an order by 12 noon tomorrow we can submit competing  
21 orders, and Your Honor decide what's appropriate?

22 THE COURT: My thought is that if you -- let's see.  
23 I'm trying to make it as expeditious, but I am not sure where I  
24 am going to be during the early part of next week. So, how  
25 about this? Do your best to meet and confer, come up with the

1 terms. It shouldn't be a difficult order. I have laid it out  
2 subject to anybody's rights to take an appeal, of course, but  
3 most of it should just be by reference.

4 And so, you should be able to come up with the terms  
5 of the order. You can take action as appropriate.

6 So, if by the close of business on Monday you haven't  
7 all agreed on a form of order, reach out for chambers. We'll  
8 see if we can have a conference call.

9 MS. BROWN: Thank you, Your Honor.

10 MR. STOLZ: Your Honor, maybe an easier way to -- to  
11 handle it is to have this -- Your Honor's ruling constitute a  
12 bench order to be followed up by a written order so it's  
13 effective immediately?

14 MS. BROWN: Judge, we'd like the opportunity to  
15 follow your instructions, and we can certainly do so by Monday,  
16 and we'll reach out if there is an issue.

17 THE COURT: I think --

18 MR. SATTERLEY: The only problem with that, Your  
19 Honor --

20 THE COURT: Go ahead.

21 MR. SATTERLEY: -- my clients die. Every day is  
22 important to my client. And if I have to make a decision about  
23 an emergency appeal, as I told Your Honor on the 11th, every  
24 single day that goes by my client is -- is closer to being in  
25 the ground, dead, and so I would request -- Your Honor made it

25

1 real clear what your order is today. There's no reason why we  
2 cannot agree to something this afternoon or tomorrow morning  
3 and submit something to Your Honor. What -- so, I would -- Mr.  
4 Stolz makes a great point, and I would request that Your Honor  
5 incorporate Mr. Stolz's request.

6 MS. BROWN: Your Honor, there are wide implications  
7 of your order, and we are prepared to follow the Court's  
8 instruction to immediately meet and confer and get the Court by  
9 Monday a proposed order.

10 MR. MAIMON: Your Honor?

11 THE COURT: Yes, Mr. Maimon?

12 MR. MAIMON: Thank you, Your Honor. We object to the  
13 debtor stringing this out. This is -- Your Honor noted that  
14 the delay for claimants should not continue any more as to the  
15 non-debtors, and it should not be that on Monday, first thing,  
16 with Your Honor out of the state, and we don't know what the  
17 Court's availability is, that we then have to first start  
18 scheduling conferences. The Court was very clear with its  
19 decision today. Mr. Stolz is correct. It's standard practice  
20 for courts to issue a bench order that the transcript is the  
21 order of the Court to be followed up with a more formal written  
22 order that can form the basis of any appeals or anything like  
23 that. But we should be able to proceed in accordance with the  
24 Court's ruling immediately.

25 THE COURT: All right. Well, in effect I thought I

1 was providing Mr. Satterley and others with the authorization  
2 to take this transcript. A bench order requires the transcript  
3 in the first place. So, I anticipate that you're going to be  
4 using the transcript. If you want the magic language that this  
5 is it's so ordered from the bench subject to the terms of a  
6 more formal order to be entered at a later date, you have it.

7 MR. SATTERLEY: Thank you, Your Honor.

8 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

9 THE COURT: All right. And then I think I wish all  
10 of you a good weekend.

11 UNIDENTIFIED ATTORNEY: Enjoy your vacation, Your  
12 Honor.

13 THE COURT: Thank you.

14 UNIDENTIFIED ATTORNEY: Don't tell anyone where you  
15 are.

16 THE COURT: I should be so lucky. Thank you.

17 UNIDENTIFIED ATTORNEY: Thank you.

18 \* \* \* \* \*

19

20

21

22

23

24

25

1                   **C E R T I F I C A T I O N**

2                   We, KAREN K. WATSON and TAMMY DERISI, court approved  
3 transcribers, certify that the foregoing is a correct  
4 transcript from the official electronic sound recording of the  
5 proceedings in the above-entitled matter and to the best of our  
6 ability.

7

8                   /s/ Karen K. Watson

9 KAREN K. WATSON

10

11                   /s/ Tammy DeRisi

12 TAMMY DERISI

13 J&J Court TRANSCRIBERS, INC.

DATE: April 20, 2023

14

15

16

17

18

19

20

21

22

23

24

25